

**MINUTES**  
**LIVESTOCK FACILITY SITING REVIEW BOARD MEETING**  
**May 18, 2007**  
**Room 106, 2811 Agriculture Drive, Madison, WI**

Chair Holte called the meeting to order at 10:05 a.m. LFSRB members present were Lee Engelbrecht, Andy Johnson, Bob Selk, Bob Topel, Jerome Gaska, and Fran Byerly. DATCP staff present were Cheryl Daniels and Lori Price.

**Call to order**

Holte stated the meeting had been publicly noticed, as required, and presented the agenda for approval. Johnson made a motion to approve the agenda, and Selk seconded the motion. The motion passed.

Holte presented the October 20, 2006, meeting minutes for approval. Gaska made a motion to approve the minutes, and Engelbrecht seconded the motion. The motion passed.

Holte announced that Engelbrecht was recently reappointed to the board by the DATCP Secretary. This reappointment is pending Senate confirmation. Engelbrecht's new term will run for 5 years and end on May 1, 2012.

Daniels reminded the board that according to their bylaws, officer elections take place at the first meeting of the year, which is the June meeting. Since there may not be a June meeting, the board proceeded with officer elections at this meeting. Topel made a motion to appoint Holte for board chair, and Selk seconded the motion. The motion passed. Topel made a motion to appoint Johnson as board vice-chair, and Engelbrecht seconded the motion. The motion passed. Topel made a motion to appoint Selk as board secretary, and Johnson seconded the motion. The motion passed.

The call to order ended with board members and audience members introducing themselves.

**Refresh board on siting law and rule—Jim Matson, DATCP Legal Counsel**

Matson is legal counsel for DATCP, not the Livestock Facility Siting Review Board. He was involved in the development and drafting of the livestock facility siting law and rule. He explained that he was here today to refresh the board on that siting law and rule--not to comment on the specifics of any case pending before the board. He then discussed a few basic principles set forth of the law and rule.

The board's role is to apply the livestock siting law and rule as written. The board's role is not to make policy but to apply the law to the facts of individual cases that come before the board. The board is required to decide each appeal based on the facts in the local record (the board does not hold new public hearings to collect new facts). However, the board is not bound by the local decision or the local government's interpretation of the law. The board may come to its own

decision but must have a reasonable basis for that a decision. Board decisions may be appealed to a circuit court. If there is a court appeal, the circuit court will review the administrative record to determine whether the board had a reasonable basis for its decision and whether the board accurately interpreted the law.

The siting law preempts local actions that are contrary to the siting law. The law establishes uniform state standards to avoid numerous inconsistent local standards. A local government may not impose more stringent standards unless those standards meet specific criteria in the siting law.

An applicant for a local siting permit must submit a detailed application that complies with DATCP rules. The application is designed to demonstrate presumptive compliance with the siting law. If an application is complete, credible on its face, and internally consistent, a local government *must approve* the application unless the local government proves, by clear and convincing evidence in the local record, that the proposed facility fails to meet state standards (the burden of proof shifts to the local government).

A local government may not require an applicant to meet more stringent standards unless all of the following apply:

- The local government has authority to adopt the standards under other applicable law (the siting law does not confer new authority). If the standards are adopted under state nonpoint laws (e.g., s. 92.15, Stats.) and are more stringent than state nonpoint standards, they must be pre-approved by DATCP or DNR (per Attorney General's opinion).
- The local government enacted the standards *by local ordinance*, and did so *before* the livestock operator filed the application for local approval.
- The local government enacted the standards based on reasonable and scientifically defensible findings of fact adopted by the local governing authority (in ordinance or accompanying resolution).
- The findings of fact clearly show that the more stringent standards are needed to protect public health or safety (not just aesthetics, community preferences, etc.).

If a local government approves a permit subject to specified conditions, the effect is to deny the permit unless the applicant complies with those conditions. The question becomes: Is the noncompliance with those conditions a legitimate ground for permit denial under the livestock facility siting law, or do the conditions impose a more stringent standard or requirement not authorized under the law?

The livestock facility siting law does not nullify other laws or local ordinances (in the siting application itself, the applicant acknowledges that other laws apply). However, the siting law *does* limit the use of a *siting permit* as a method for *enforcing* those other laws or ordinances. A siting permit may only be denied for reasons specifically authorized in the siting law. A siting permit does not necessarily immunize a permit holder against local enforcement (e.g., court enforcement) of other applicable laws or ordinances. But, that enforcement is separate from the siting permit.

In response to Board questions, Matson and Daniels said that a board decision would normally include findings of fact, conclusions of law, an order, and possibly an opinion explaining the decision. The board is not a permit-issuing authority, so if the board reverses the denial of a local permit, the board would likely remand to the local government with an order to issue the permit. If the local government fails to comply, the applicant may go to court to enforce the order.

#### **ATCP 51 annual report—Mike Murray, DATCP**

This item was moved up before the lunch break because the meeting was running ahead of schedule.

Murray presented the first annual livestock siting report to the board. His presentation covered the following areas:

- land use planning and livestock regulation, including an overview of challenges in planning and zoning plus a review of laws superseded by the siting law;
- local implementation of siting standards
  - 38 county and town siting ordinances have been enacted, plus many local governments continue to evaluate if they will adopt siting ordinances
  - 4 permits have been issued by local government, 18 applications in progress or planned, timeframes for permitting process
  - summary of local implementation challenges
  - requirements for and examples of more stringent standards
  - department interpretations of the siting standards provided when answering questions from local government, consultants and producers;
- prior and future DATCP outreach efforts; and
- future trends in livestock siting.

Johnson asked of the pending applications, how many have or are pending DNR WPDES permits. He was concerned with the WPDES permit process complicating the integration with the siting application process. Murray replied that about a third of the 18 applications in progress have or will need a WPDES permit.

#### **Board future agenda item(s) and scheduled meetings—Cheryl Daniels, DATCP**

The scheduled meetings portion of this agenda item was moved up before the lunch break.

Daniels reported that the Larsen Acres case will be brought back to the board for review, and the earliest board meeting where this case would be addressed would be the July 20<sup>th</sup> meeting. It's possible at the July meeting that the board may only make a completeness determination. If that is the case, the final decision will be made at a later meeting, possibly August or September. Holte polled the board members to find out if there might be any conflicts with the July-September meeting dates. The only conflict was that Engelbrecht may not be able to make the

September meeting. Daniels added that if there needs to be any preliminary discussion about the case, it may be possible to conduct those meeting by teleconference. Holte requested that the 2008 meeting dates be established in the fall of 2007. For right now, board members should plan on the third Friday of the month as the tentative dates for the 2008 meetings.

**At this time, the board took a lunch break.**

Daniels went over the timeline for documentation and review of Larsen Acres case. The appeal was received on April 26<sup>th</sup>. The notice of request for review was sent out on April 30<sup>th</sup>. The request for record of decision making was sent to the Town of Magnolia on April 30<sup>th</sup>. The Town received the request on May 1<sup>st</sup>. The Town has until May 31<sup>st</sup> to deliver the certified record to the board. Hardcopies of the record will be sent to the board the week of June 4<sup>th</sup>. Written statements from affected parties within the 2-mile radius of the facility are due to the board by June 29<sup>th</sup>. Any statements received will also be transmitted to the board the week of July 2nd. This Larsen case will be the main agenda item for the July 20th meeting. In preparation for the July meeting, Daniels will prepare a draft document concerning the nature of the case, statute reference, statement of issues, general facts that pertain to the case, and conclusions of law. Once a decision is made by the board, Daniels will draft a **final** decision and have the board meet again to approve it. It is possible that the approval of the decision could be done by conference call, which will be open to the public. The board members should feel free to mark up their copy of the record because it is not the original.

This agenda item ended with the board members discussing how the record should be reviewed at the July meeting. They agreed that at the start of the July meeting, the case issues should be identified first followed by how the board would like to structure the discussion and then the actual discussion would take place.

**Adjourn**

There being no further business for the board, Holte adjourned the meeting at 1:32 p.m.

Respectfully submitted,



Bob Selk, Secretary

7-20-07

Date

Recorder: LP